

SPECIALIZED ENVIRONMENTAL COURTS AND TRIBUNALS: A NECESSITY ?

Luc Lavrysen, Amsterdam, September 28th, 2017

GLOBAL TENDENCIES

Based on:

G. Pring & C. Pring, ***Environmental Courts & Tribunals: A Guide for Policy Makers***, Nairobi, UN Environment, 2016, 120 p.

GLOBAL TENDENCIES

- Explosion of number of ECTs since 2000
- For the moment 1200 ECTS, in 44 countries; discussions in 20 other countries
- Propelled by the fast development of environmental law principles and rules on the different levels of government

GLOBAL TENDENCIES

- Link between environmental law and human rights law
- Environmental and climate change crisis
- Critics on the ability of the general judicial system to respond in an effective way

DIVERSITY

Hugh differences in the various systems (5 Models)

Model 1: Extensive competencies

- Administrative, civil and criminal jurisdiction
- Environmental law in the broad sense, land use planning, renewable energy
- Large territory (sometimes various regional sections or local hearings)

DIVERSITY

- Combining legal, scientific and technical experience (technical judges or experts of the Court)

E.g. ***Land and Environment Court of New South Wales (Australia)***
<http://www.lec.justice.nsw.gov.au/>

National Green Tribunal (India)
<http://www.greentribunal.gov.in/>

DIVERSITY

Model 2 + 3: Intermediate competencies

Model 2 : combination of administrative and civil jurisdiction – environmental and planning law, not energy law – legal and technical expertise – large territory

E.g. ***Vermont Superior Court, Environmental Division*** (US)–
Land- and Environmental Courts (Sweden) - ***Tribunal Ambiental***
 (Chile) – ***Environment and Land Court*** (Kenya)

DIVERSITY

Model 3 : combination of civil and criminal jurisdiction
± 450 Environmental Tribunals in PR China

Model 4 : more limited competencies: specialized administrative Courts and Tribunals

- E.g. **Vasaa Court** (Finland), **Environmental Court of New Zealand**, **Raad voor Vergunningsbetwistingen** and **Milieuhandhavingscollege** (Flemish Region of Belgium)

DIVERSITY

- Model 5 – Specialised sections of General Courts
 - E.g. **Environmental Courts** (Philippines), **Lahore High Court Green Bench** (Pakistan), **Hawai'i Environmental Courts**

Preference for model 1, but national legal traditions and political circumstances can advocate for another model

Important to include civil law in the competencies of such courts and tribunals

ADVANTAGES

- **Expertise:** Expert decision makers make better decisions
- **Efficiency:** Greater efficiency, including quicker decisions
- **Visibility:** Shows visible government support for the environment and sustainability and provides an easily identifiable forum for the public
- **Cost:** Can lower expenses for litigants and the courts
- **Uniformity:** Greater uniformity in decisions, so litigants know what to expect
- **Standing:** Can adopt rules that expand standing, for individuals, ENGO's and PIL
- **Commitment:** Effectuates government's commitment to the environment and sustainability

ADVANTAGES

- **Accountability:** Greater government accountability to the public
- **Prioritization:** Ability to prioritize and move on cases that are urgent
- **ADR:** Broadens ability to use ADR and other non-adversarial dispute resolving processes, including restorative justice
- **Issue Integration:** Can deal in a more integrated way with multiple laws, particularly if the ECT has civil, criminal and administrative jurisdiction
- **Remedy Integration:** Can combine civil, criminal and administrative remedies and enforcement under one roof
- **Public Participation:** Involvement of the public can be increased

ADVANTAGES

- **Public Confidence:** *The public's confidence in the government and the judicial system can be increased, so that members of society are more likely to bring concerns to the system*
- **Problem Solving:** *Judges can look beyond narrow application of the rule of law and craft creative new solutions*
- **Judicial Activism:** *Can apply new international principles of environmental law and natural justice as well as national/local law*
- **Potential Drawbacks can be avoided by smart design of the ECT system**



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